

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS, ALONSO VILLATORO, MISael ALEXANDER MARTINEZ CASTRO, ANGEL MARTINEZ, EDWIN ULLOA MOREIRA and MATEO UMANA individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

KELCO CONSTRUCTION, INC., KELCO LANDSCAPING, INC., E.L.M. GENERAL CONSTRUCTION CORP. D/B/A KELLY'S CREW, JOHN KELLY and JOSEPH PROVENZANO,

Defendants.

Case No. 1:21-CV-09014
(PAE)(SDA)

**DECLARATION OF JOSE FLORES IN SUPPORT OF
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR
CONDITIONAL CERTIFICATION PURSUANT TO 29 U.S.C. § 216(b)**

I, Jose Flores, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I submit this declaration in support of Defendants' Opposition to Plaintiffs' Motion for Conditional Certification pursuant to 29 U.S.C. § 216(b). I am personally familiar with the facts set forth below and submit this declaration based on my personal knowledge.
2. I am a resident of Bay Shore, New York.
3. I currently work for Kelco Construction as a laborer. I have been working for Kelco Construction since approximately 2011.
4. As a laborer, I perform landscaping and planting work.
5. I am a union member of Local 731.
6. I also drive the company vehicle into New York City sites for work. I pick up the company vehicle at 25 Newton Place, Hauppauge, New York ("Hauppauge facility") around 4:30

a.m.

7. I pick up approximately four (4) to five (5) employees from the park-and-ride location in Commack, New York. It takes me approximately eight (8) minutes to arrive at the park-and-ride location from the Hauppauge facility.

8. I do not perform any work on the company vehicle in the morning at the Hauppauge facility.

9. The workers I pick up from the park-and-ride location do not perform any work prior to commuting into the New York City jobsites in the company vehicle I drive.

10. On average, it takes approximately one (1) hour to drive to the jobsites in New York City from the Commack park-and-ride location or from the Hauppauge facility. It typically takes me approximately two (2) hours, due to traffic conditions, to drop off other workers at the end of the workday.

11. I generally start work for the day from approximately 7:00 a.m. and end work at approximately 3:30 p.m.

12. I usually returned to the park-and-ride at the end of the workday by approximately 5:00 p.m. or 5:20 p.m.

13. To compensate me for this time that I spend driving, ELM pays me three (3) hours of drive time at a rate of \$20.00 per hour (for a total of \$60.00 per day).

14. I clean up the company vehicle every week and occasionally prepare the company vehicle for the following day. It takes me approximately twenty (20) to twenty-five (25) minutes to clean the company vehicle on a weekly basis, which I typically do when I have extra time. There is no set day of the week that I clean the truck and am not instructed to do so by Kelco Construction or ELM. Rather, I voluntarily clean the truck so that I can ride in a clean vehicle daily as part of

my commute.

15. There are approximately seven (7) other employees who perform driving duties as I do.

16. I typically work for Kelco Construction approximately eight (8) hours per day, five (5) days per week.

17. I am paid approximately \$50-51 per hour from Kelco Construction.

18. I sometimes work an extra day of the week, for a total of six (6) days. I generally work this extra day on Saturdays in the summer.

19. I generally am paid \$25.00 per hour from ELM for additional Saturday work and am paid at an overtime hourly rate of \$37.00 for hours worked over forty (40).

20. I know Carlos Alvarez Chicas, Alonso Villatoro, Misael Alexander Martinez Castro, and Angel Martinez. I have never heard any of these individuals complain about their wages. I have also never discussed wage issues with any of these individuals.

21. My primary language is Spanish. On January 25, 2023, Luis Lopez, CCI verbally translated this declaration to me in Spanish. I fully understand the contents of this declaration in my primary language.

22. This declaration was prepared by counsel for Defendants in the action based on an interview in which I voluntarily participated. I was advised that I could end the interview at any time. I have also been told by counsel for the Defendants that I should sign this declaration if I want to and if everything within it is true and correct to the best of my knowledge, information, and belief. I have been given a full opportunity to review this declaration carefully and freely and make any corrections and additions of any kind.

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Date: January 25, 2023

Jose Flores

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